

MARITIME ENFORCEMENT POWERS – HOT PURSUIT

Purpose

1. The Department of Justice (DOJ) letter of 3 October set out the background to the proposed Legislative Consent Motion (LCM) in relation to maritime enforcement powers. The purpose of this paper is to describe how, in practice, such powers would be used in hot pursuit circumstances and the envisaged oversight and accountability arrangements. While it is anticipated that the use of such powers would be infrequent, if indeed not rare, it is nevertheless important to ensure that all parties have a shared understanding of what would happen should they be called upon.

Oversight

2. DOJ officials have liaised with colleagues in the Home Office and with the Office of the Police Ombudsman (OPONI) to agree an approach to oversight, namely:
- any officer from an England & Wales police force entering NI waters in hot pursuit situations would be subject to OPONI oversight. As required, OPONI would conduct an independent investigation and report to the Independent Police Complaints Commission (IPCC) and/or the chief officer of the home force, including any OPONI recommendations. The IPCC / relevant chief officer would have discretion to decide whether or not to pursue disciplinary proceedings against any officer in his/her force. (This is consistent with the current arrangements in NI where OPONI conduct investigations, make recommendations to the Chief Constable, and decisions regarding disciplinary matters are for the Chief Constable.) The policy intent is that OPONI would be required to investigate in cases of: death and serious injury; serious incidents (such as serious assaults, sexual offences etc.); criminal allegations; and matters of high public interest (such as corruption, racism, incidents involving children). OPONI would have discretion to delegate, to the IPCC, investigations relating to lower level matters which fall outside these categories; and

- in the event that, using these powers, PSNI officers enter into England and Wales waters, OPONI would continue to have oversight and the existing arrangements in NI would continue to apply.

3. It is worth noting that, in cases of all incidents in territorial waters, the criminal law of the relevant jurisdiction for those waters would continue to apply. That is, in relation to England & Wales officers operating in NI waters, OPONI would investigate issues of both conduct and/or criminal activity. The Police Ombudsman is content with the proposed oversight arrangements, as described above, subject to seeing the final draft of the legislation and appropriate funding being made available, as required.

Accountability

4. The issues around accountability have been discussed with the PSNI (ACC Todd). Recognising that such powers are likely to be called upon infrequently and, in many cases may involve pre-planned operations, the PSNI have advised that the Chief Constable would be content to provide retrospective accountability to the Board. That is, he would make himself available to the Board and provide written information and/or answer questions on any incident on the use of these powers in NI waters, by either PSNI officers or officers from England & Wales forces.

Police Scotland

5. At this stage, colleagues in the Home Office and the Scottish Government are keen to include Police Scotland in the proposed arrangements. While all parties recognise the value and importance of ensuring that no area of UK waters provide a safe haven for those seeking to evade justice, there is, at present, a concern among some stakeholders in Scotland regarding the degree of oversight by OPONI of Police Scotland officers when in NI waters. It is understood that the crux of the matter is that, in the arrangements proposed, Police Scotland officers would find themselves subject to greater oversight and scrutiny when in NI waters than is currently the case when in Scotland.

6. DOJ officials continue to engage with the Home Office and Scottish Government to resolve this issue. They consistently hold the line that any officer

exercising these powers in NI waters must be subject to OPONI. In order to meet the tight legislative timetable, it is proposed that the LCM should include the scope to extend the hot pursuit provisions to Police Scotland but that the provisions would not commence until formal agreement on these matters is reached.